

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GARY TAYLOR KRUITBOSCH,

Plaintiff,

v.

STATE OF UTAH,

Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:09-cv-168 CW

Plaintiff Gary Taylor Kruitbosch has brought this action against Defendant the State of Utah. In the Complaint, Mr. Kruitbosch alleges causes of action under 28 U.S.C. § 1983 for violations of Mr. Kruitbosch's civil liberties stemming from his conviction for sex abuse charges and subsequent 15 year incarceration in Utah state prison.

This matter is before the court on Magistrate Judge Samuel Alba's Report and Recommendation (Docket No. 8). After the court granted Plaintiff's motion to proceed *in forma pauperis* and Plaintiff moved for service of process and appointment of counsel, Judge Alba reviewed the complaint pursuant to 28 U.S.C. § 1915. Under that section, a court having granted a motion to proceed *in forma pauperis* "shall dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). After carefully examining the Complaint, Judge Alba recommended that the

case be dismissed under § 1915 because Utah has not waived its Eleventh Amendment immunity and because a § 1983 action “cannot be used to undermine the validity of one’s conviction or confinement.” (Report and Recommendations at 5, citing *Heck v. Humphrey*, 512 U.S. 466, 480-82 (1994).) Mr. Kruitbosch objected to Judge Alba’s report.

The court has conducted a *de novo* review of the record of this case. Upon that review, the court finds that Judge Alba’s Report and Recommendation is correct in all material respects and that Mr. Kruitbosch’s objections are unfounded. In particular, Mr. Kruitbosch’s objection that the court has not yet addressed his motion to appoint an attorney is not well taken, since § 1915 allows for dismissal of an action filed *in forma pauperis* of “at any time” based on failure to state a claim. 28 U.S.C. § 1915(e)(2)(B)(ii).

CONCLUSION AND ORDER

Based on the foregoing, the court APPROVES and ADOPTS Judge Alba’s Report and Recommendation. Accordingly, this action is DISMISSED.

SO ORDERED this 3rd day of November, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Clark Waddoups', written in a cursive style.

Clark Waddoups
United States District Judge